



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

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W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

Robert G. Burnley  
Director

Francis L. Daniel  
Regional Director

## **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO**

**Commander, Navy Region, Mid-Atlantic  
EPA ID Number VA2170024606**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board and the Commander, Navy Region, Mid-Atlantic, for the purpose of resolving certain violations of environmental law and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1401 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “CNRMA” means Commander, Navy Region, Mid-Atlantic (formerly Commander, Navy Region, Mid-Atlantic, Regional Engineer “CNRMA-RE”).
6. “NAS” means the U.S. Navy – Naval Air Station, Oceana, with the listed address of 1750 Tom Cat Blvd, Virginia Beach, VA 23460.
7. “Order” means this document, also known as a consent order.

8. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
9. "EPA" means the United States Environmental Protection Agency, with the headquarters office located at 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
10. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* ("VHWMR"). The Regulations at 9 VAC 20-60-124, 260-266, -268, -270, -273, and -279 adopt by reference certain provision of Title 40 of the Code of Federal Regulations ("CFR").
11. "RCRA" means the federal Resource Conservation and Recovery Act.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The CNRMA operates the U.S. Navy - Naval Air Station, Oceana, located in the vicinity of Oceana Boulevard with the listed address of 1750 Tom Cat Boulevard. The NAS is a federal facility that provides a variety of support activities for U.S. carrier-based jet aircraft.
2. NAS is a generator of hazardous waste from the operation and maintenance of aircraft, vehicles, and the facility itself. These wastes include solvents, corrosives, batteries, paint wastes, petroleum products, and off-spec, excess, or out-of-date commercial chemical products. NAS is classified as a large quantity generator (LQG), thus greater than 2,200 pounds total hazardous waste are generated per month, on average.
3. CNRMA was issued a Hazardous Waste Management Facility permit for NAS with an effective period of September 17, 1993 until September 16, 2003 (hereinafter referred to as the "permit"). The DEQ issued the permit, which established NAS buildings #1110 and #1112 as a permitted treatment, storage and disposal (TSD) facility for hazardous wastes. The permit included a closure plan that required removal of waste material within 90 days, and completion of closure activities within 180 days, after receipt of final volume of hazardous waste, in accordance with the plan and Regulations. Hazardous wastes generated at NAS were stored at temporary collection points on site then moved to storage compound buildings #1110 and #1112, covered by the permit. Prior to this permit, NAS had qualified on an interim basis as a TSD.
4. In a letter dated January 30, 2003, DEQ Waste Permitting requested that CNRMA submit a renewal application by March 17, 2003 for the NAS permit.
5. In a letter dated March 14, 2003, CNRMA responded that it did not intend to renew the NAS permit. Subsequently, CNRMA stated in a letter dated April 18, 2003 that the last shipment of hazardous waste would be received at the NAS permitted TSD on September 16, 2003.

6. CNRMA later requested approval for partial closure of the permitted NAS hazardous waste TSD in a letter dated June 16, 2003. By letter dated June 27, 2003 DEQ responded to CNRMA, noting that according to 40 CFR Part 264.112(c)(1), a written request for a permit modification (Class 1) such as this needed to include an amended closure plan and the modification fee of \$150.00. This would allow DEQ to proceed with the CNRMA request to obtain a permit modification for partial closure and extended time to perform closure activities at the TSD permitted at NAS.
7. The permit expired on September 16, 2003. DEQ had not received by that date from CNRMA a written request for permit modification, modification fee, or amendment of any component of the permit including the closure plan and/or closure schedule, that might have changed or extended the permit expiration date. Reportedly, hazardous waste continued to be stored in TSD building #1110 after September 16, 2003.
8. CNRMA submitted a request dated February 23, 2004 to amend the approved permit closure plan in order to extend the closure period. The CNRMA request included a final closure plan. In a letter dated April 22, 2004, DEQ responded that since the permit had expired (September 16, 2003), a valid permit did not cover the TSD and DEQ could not accept the request to amend the closure plan to change the closure period.
9. DEQ staff conducted a RCRA hazardous waste compliance evaluation inspection at NAS on March 23 and 26, 2004. According to the hazardous waste facility-area weekly inspection reports obtained during the inspection, hazardous waste containers were located in Building #1110 from January 14 thru February 18, 2004. CNRMA maintains that following the permit expiration date of September 16, 2003 the permitted TSD was used for short-term storage only of hazardous waste and weekly inspections were conducted during this time.
10. According to § 10.1-1426 (A) of the Virginia Waste Management Act, a permit is required to operate a hazardous material TSD facility. The TSD permit for NAS expired on September 16, 2003. By DEQ inspection, hazardous waste containers were located in the TSD from January 14 thru February 18, 2004. CNRMA operated a TSD facility without a Hazardous Waste Management Facility permit in violation of § 10.1-1426 (A).
11. According to the permit closure plan and 40 CFR 264.113(a) and (b), a facility must treat, remove, or dispose on site all hazardous waste within 90 days, and complete partial and final closure activities within 180 days, after receiving the final volume of hazardous waste. According to the dates provided by NAS, this would have been by December 15, 2003 (90 days) and March 14, 2004 (180 days). The permit had expired on September 16, 2003.

12. CNRMA had not removed all hazardous waste or completed closure of the permitted hazardous waste TSD at NAS in accordance with the permit closure plan, in violation of the plan and 40 CFR 264.113(a) and (b).
13. DEQ issued CNRMA a Notice of Violation on May 12, 2004 advising of the above listed failures of operating a TSD without a permit and failing to complete closure of the TSD at NAS prior to the permit expiration date.

#### **SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders the CNRMA, and the CNRMA voluntarily agrees, to pay a civil charge of \$11,200.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," shall indicate the CNRMA's Federal Identification Number, and shall be sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

2. Within 30 days of the effective date of this Order, CNRMA will submit to DEQ an approvable closure plan for the hazardous waste TSD at NAS.
3. Within 180 days of approval by DEQ of the closure plan for the hazardous waste TSD at NAS, CNRMA will complete closure activities according to the closure plan.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the CNRMA for good cause shown by the CNRMA, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to the CNRMA by DEQ on May 12, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order only, the CNRMA admits the jurisdictional allegations in the Order but does not admit the factual allegations or legal conclusions contained herein.

4. The CNRMA declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of substantive or procedural rights to which the CNRMA is entitled by Federal law, the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by CNRMA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The CNRMA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, national security emergency declared by the President and other circumstances beyond the CNRMA's control, strike, or such other occurrence. The CNRMA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The CNRMA shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the CNRMA intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

9. This Order shall become effective upon execution by both the Director or his designee and the CNRMA. Notwithstanding the foregoing, the CNRMA agrees to be bound by any compliance date which precedes the effective date of this Order.
10. In accordance with the Federal Anti-Deficiency Act, the obligations of the Navy under this section are expressly conditioned on the availability of Congressional appropriations, which the CNRMA agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the CNRMA will promptly inform the TRO of DEQ. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with the CNRMA's consent.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the CNRMA. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the CNRMA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable. At the CNRMA's request, the Board or Director will also terminate this Order upon timely completion of the undertakings listed in Section D.
12. By its signature below, CNRMA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Feb. 24, 2005.

Francis L. Daniel

Francis L. Daniel, Regional Director  
for Robert G. Burnley, Director  
Department of Environmental Quality

Accepted on behalf of Commander, Navy Region, Mid-Atlantic by:

By: Cheryl F. Barnett

Date: 1/19/05

Commonwealth of Virginia

City/County of NORFOLK

The foregoing document was signed and acknowledged before me this 19<sup>th</sup> day of

JANUARY, 2005, by Steven P. Conley, who is

NOTARY PUBLIC of Navy Region, Mid-Atlantic.

(title)

Steven P. Conley

Notary Public

My commission expires: 31 DECEMBER 2008

